

COPY

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE CITY OF GALENA, JoDAVIESS
COUNTY, ILLINOIS,

Petitioner,

v.

CHICAGO, CENTRAL & PACIFIC RAILROAD)
COMPANY and THE BURLINGTON)
NORTHERN and SANTA FE RAILWAY)
COMPANY,)

Respondents.)

Petition for approval of the acquisition)
of real estate in JoDaviess County by)
exercising the power of eminent domain.)

T 02-0064

RECEIVED
JUL 23 2002

Illinois Commerce Commission
RAIL SAFETY SECTION

**RESPONDENT, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY'S MOTION TO STRIKE AND DISMISS THE PETITION**

Now comes respondent, The Burlington Northern and Santa Fe Railway Company ("BNSF") by its attorneys, Kenneth J. Wysoglad & Associates and pursuant to 83 Illinois Administrative Code, Part 200 moves the Illinois Commerce Commission for an order striking and dismissing petitioner's petition in the above captioned cause. In support thereof, BNSF states as follows:

1. On information and belief, by letter dated June 7, 2002 and received by the Illinois Commerce Commission on June 11, 2002 petitioner, City of Galena, Jo Daviess County, Illinois apparently requests approval from the Illinois Commerce Commission to condemn certain property owned by BNSF. On information and belief the aforesaid June 7, 2002 correspondence was assigned case no. T 02-0064. (Exhibit A attached).

DOCKETED

2. On or about June 20, 2002 the Illinois Commerce Commission issued its Notice of Hearing in the above captioned cause scheduling public hearing for July 30, 2002 at the hour of 9:30 a.m. at the offices of the Illinois Commerce Commission in Chicago, Illinois. (Exhibit B attached). The aforesaid Notice of Hearing was received by BNSF on or about June 24, 2002 and constituted BNSF's first notice of the above captioned proceeding.
3. The June 7, 2002 letter by the City of Galena, Jo Daviess County, Illinois is defective as a petition and must be stricken and dismissed as the same is not properly verified nor was it served on respondent. Section 200.130 of 83 Illinois Administrative Code requires that a petition filed with the Illinois Commerce Commission must be verified by the filing party before a notary public. 83 Ill. Adm. Code 200.130. Additionally, Section 200.150 of 83 Illinois Administrative Code requires that a petition shall be served on all parties to the proceeding and shall be accompanied by proof of service of all parties. 83 Ill. Adm. Code 200.150 (b).
4. The June 7, 2002 correspondence from the City of Galena, Jo Daviess County, Illinois fails to meet the requirement of signature and verification and service as required by the Illinois Commerce Commission's Rules of Practice and said correspondence must therefore be stricken.

Wherefore, respondent, The Burlington Northern and Santa Fe Railway Company prays that the Illinois Commerce Commission enter an order striking the June 7, 2002 correspondence of the City of Galena, Jo Daviess County, Illinois as an insufficient petition and dismissing the above captioned proceedings.

The Burlington Northern and Santa Fe Railway
Company

By:


Michael L. Sazdanoff

Michael L. Sazdanoff
Kenneth J. Wysoglad & Associates
Attorneys for Respondent
The Burlington Northern and Santa Fe Railway Company
118 S. Clinton Street, Suite 700
Chicago, Illinois 60661
(312) 441-0333

HAMMER, SIMON & JENSEN COPY

ATTORNEYS AT LAW

DAVID L. HAMMER*
ANGELA C. SIMON**
PHILIP F. JENSEN*
SCOTT J. NELSON*
PAUL T. JENSEN*
VAL GUNNARSSON

ALL ATTORNEYS LICENSED IN ILLINOIS

*ALSO LICENSED IN IOWA

**ALSO LICENSED IN WISCONSIN

June 7, 2002

TC2-0064

303 NORTH BENCH STREET
P.O. BOX 270
GALENA, IL 61036
TELEPHONE: 815-777-1101
FAX: 815-777-9241

770 MAIN STREET
DUBUQUE, IA 52001
TELEPHONE: 563-583-4010
FAX: 563-583-3402

9317B ROUTE 84
SAVANNA, IL 61074
TELEPHONE: 815-273-3340
FAX: 815-273-3441

Mr. Michael Stead
Illinois Commerce Commission
527 E. Capitol
Springfield, IL 62701

RECEIVED
JUN 11 2002

Illinois Commerce Commission
RAIL SAFETY SECTION

Dear Mr. Stead:

I am the City Attorney for Galena, Illinois, and in that capacity I am writing you to request approval from the Commerce Commission to condemn certain property owned by the Burlington Northern and Santa Fe Railway Company.

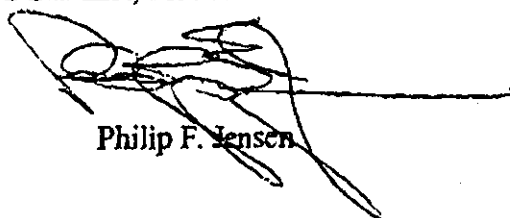
The City of Galena has been given a grant from the Illinois Department of Natural Resources - Open Space Land Acquisition and Development Grant (OSLAD) for the purpose of acquiring land for a recreational trail. This trail will ultimately be a part of the Grand Illinois Trail System. The City previously has been in communication with the Burlington Northern and Santa Fe Railway Company and in fact, provided them with the enclosed Offer to Purchase based on an appraisal that had been completed.

The City has attempted to reach a negotiated purchase price for that property but has been unable to do so. We are requesting Interstate Commerce Commission approval to proceed with condemnation.

Your prompt review of this is greatly appreciated. If you have any questions, feel free to contact me.

Very truly yours,

HAMMER, SIMON & JENSEN



Philip F. Jensen

PFJ:kw

Enclosures

cc: Mark Moran, City Admin.

k:\city\bikepath\steadmike-bnsf-itr

EXHIBIT A

DOCKETED
JUN 11 2002

RAIL PROPERTY MANAGEMENT

Alice M. O'Donnell

April 5, 2002

Mr. Mark Moran
City Administrator
City of Galena
312 1/2 N. Main Street
Galena, IL 61036

57 Ogden Avenue
Clarendon Hills, IL 60514
Direct Line: 630-325-6726
Fax: 630-325-6908
e-mail:
aodonnell@railproperty.com

Re: BNSF's property in Galena, Illinois

Dear Moran:

Based on discussions with management, the railroad will not entertain the City's offer of \$70,000.00. However, they will consider an offer of no less than \$140,000.00 subject to upper management's approval.

Please understand that "All offers received for the purchase of Burlington Northern and Santa Fe Railway property must be submitted to Railroad's management for final review and consideration. This review process may take from 90 to 180 days, during which time your earnest money deposit may be processed for payment. Please understand that no acceptance is implied on the part of the Burlington Northern and Santa Fe Railway until such time as you receive a fully executed counterpart of the contract. The railroad reserves the right to accept or reject all offers during this final review process."

Respectfully,



Alice M. O'Donnell

OFFER TO PURCHASE

THE UNDERSIGNED, The City of Galena, Illinois, a municipal corporation, hereinafter referred to as "Buyer," hereby offers and agrees to purchase from The Burlington Northern and Santa Fe Railway (formerly Chicago, Burlington & Quincy Railroad Company), hereinafter referred to as "Seller," the real property commonly known as Galena Junction to Galena, Illinois branch line right-of-way, a more specific description is attached hereto as Exhibit "A", fully incorporated herein by this reference.

PURCHASE PRICE: The purchase price is Seventy Thousand Seven Hundred Twenty-Five and 00/100 Dollars (\$70,725.00), subject to the existing zoning and use restrictions and easements of record and the contingencies set forth herein, upon the following conditions:

CONSUMMATION OF SALE: The sale shall be consummated by payment of One Thousand and 00/100 Dollars (\$1,000.00) along with this contract as a security deposit. The remaining sum of Sixty-Nine Thousand Seven Hundred Twenty-Five and 00/100 Dollars (\$69,725.00) shall be paid to Seller at closing.

CLOSING: Closing shall be on or before March 29, 2002, or on the date, if any, to which such date is extended by reason of problems which have arisen with regard to the status of the title of the premises described herein, provided title has been shown to be good or is accepted "as is" by Buyer. Unless subsequently mutually agreed otherwise, the closing shall take place at the office of Hammer, Simon & Jensen, 303 N. Bench Street, Galena, Illinois.

POSSESSION: Possession shall be given to Buyer immediately following closing.

SURVEY: Seller shall not be required to furnish a survey to the Buyer or to have the property staked so as to show the perimeter boundary locations.

CLOSING INSPECTION & CONDITION: At a pre-arranged reasonable time after acceptance of this Offer, Buyer shall have the right to inspect the premises so as to evaluate whether or not there are any environmental concerns. Buyer and Seller shall determine a mutually agreeable time to conduct such inspection.

ADDITIONAL CONDITIONS:

- (a) The amount specified as the purchase price or the certified fair market value is supported by the accompanying appraisal conducted by Hertz Appraisal Services, 103 South Center Street, Geneseo, Illinois 61254, dated November 1, 2001.
- (b) The purpose of the acquisition is for a recreational trail for biking, hiking, walking, jogging and cross-country skiing.

- (c) Further inquiry regarding this Offer, on behalf of the City, should be directed to Mr. Richard Auman, Mayor, City of Galena, 312½ North Main Street, Galena, Illinois 61036.
- (d) Accompanying this Offer and made an integral part is a statement of just compensation which is attached to this Offer to Purchase.
- (e) The deed conveyed must contain a use restriction and covenant that reads as follows:

"The real property described herein must be maintained for public outdoor recreation use purposes only as prescribed by the State of Illinois, Department of Natural Resources, under terms of the State's bike path (BP Grant Program) and shall not be sold or exchanged or have other encumbrances placed on the title, in whole or in part, which divests control or interest in the property to another party without prior approval from the State of Illinois, Department of Natural Resources or its successor."

COMPLIANCE: Seller and Buyer agree to provide all information necessary to complete and execute all documents and perform all actions necessary to comply with the following:

- (a) Real Estate Settlement Procedures Act of 1974.
- (b) Any and all Internal Revenue forms applicable.
- (c) A mutually agreeable summary of the closing transaction.
- (d) All laws, statutes, ordinances, rules and regulations applicable to this transaction.

SELLER REPRESENTATIONS: Seller represents to Buyer as of the date of Seller's execution of this Offer to Purchase as follows:

- (a) There are no underground storage tanks on the premises.
- (b) The premises are not contaminated with any hazardous substances.

STATUS OF TITLE: Title to the real estate when conveyed may be subject only to the following:

- (a) Plat restrictions.
- (b) Perimeter public utility easements which do not underlie the existing improvements.

- (c) Restrictions and covenants of record, provided they are not violated by the existing improvements or the present use thereof and provided further that they do not contain a reverter or right of re-entry.
- (d) Special assessments and taxes for improvements not yet completed.
- (e) Seller shall deliver a recordable Warranty Deed (or Trustee's or Executor's Deed, if applicable) sufficient to convey the real estate to Buyers, in fee simple, subject only to exceptions permitted herein, at the closing of this transaction upon Buyers' compliance with the terms of this Contract. If personal property is to be conveyed as a part of this transaction, Seller shall also deliver a warranty Bill of Sale. Seller shall also provide at their expense the state and county transfer tax declarations and any other transfer tax declaration, zoning certificate, or exemption that may be necessary for recording.

PRORATIONS: General real estate taxes (based upon tax assessor's latest evaluation and latest known tax rate), water, taxes, and proratable items shall be prorated to the date of closing. All prorations are final unless otherwise provided herein.

EVIDENCE OF TITLE: Buyer, at their own expense, shall prepare and pay for the following documents to evidence the condition of the Seller's title:

- (a) A commitment for title insurance for the real estate issued by a title insurance company licensed to do business in the State of Illinois, bearing date on or subsequent to the date hereof, in the amount of the purchase price and showing title in the intended grantor, subject only to the general exceptions set forth above and exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by the payment of money at the time of closing. Such title commitment shall be conclusive evidence of merchantable title, except for matters not covered or insured thereby.
- (b) Such other documents as are reasonably required for the issuance of a Title Insurance Policy.

If the evidence of title discloses unpermitted exceptions, Seller shall have 30 days from the date of delivery thereof to have the exceptions removed from the commitment or to have the title insurer commit to insure against loss or damage that may be occasioned by such exceptions, and, in such event, the time of closing shall be 35 days after delivery of the commitment or the title specified in Paragraph CLOSING. If Seller fails to have the exceptions removed, or in the alternative, to obtain the commitment for title insurance specified above as to such exceptions within the specified time, Buyer may terminate this contract or may elect upon notice to Seller within ten days after the expiration of the 30 day period, to take title as it then is with the right to deduct from the purchase price lien or encumbrances of a definite or ascertainable amount. If Buyer does not so elect, this contract shall become null and void without further actions of the parties.

REAL ESTATE COMMISSION: Seller and Buyer warrant that neither has engaged the services of a real estate broker and no commission is due and owing.

DEFAULT: If the Buyer defaults, all earnest money shall be forfeited and applied pursuant to the terms of the listing agreement, if any, and to the payment of any expenses incurred by Seller or his agents; and because of the difficulty of ascertaining the exact amount of actual damages sustained by Seller, it is agreed that Buyer shall relinquish any and all monies deposited by them under this contract. Such monies shall be deemed to represent damages sustained, provided, however, that this provision with the respect to liquidated damages shall not be the exclusive remedy of Seller, and Seller shall retain all monies deposited without prejudice to his other remedies. If Seller defaults, the earnest money, at the option of the Buyer, shall be refunded to Buyer, but such refunding shall not release Seller from his obligations under this Contract nor foreclose the right of Buyer to pursue other legal remedies.

SURVIVAL OF CONTRACT TERMS: All agreements, representations and warranties made herein shall be deemed to be remade at the closing and shall survive the closing.

TIME: Time is of the essence of this Contract.

NOTICES: All notices herein required shall be in writing and shall be served, unless otherwise provided, on the parties or their respective attorneys, if any, personally or by certified or registered mail (return receipt requested). Notice shall be deemed given on the date of actual receipt.

BINDING ON SUCCESSORS OR ASSIGNS: The covenants herein shall be binding on the executors, administrators, successors, and assigns of the respective parties to this Offer to Purchase.

This Offer by the Buyer shall remain open until February 22, 2002 at 4:30 p.m. at which time it shall be revoked unless accepted by Seller.

DATED this 14th day of Feb., 2002.

BUYER:

CITY OF GALENA, ILLINOIS

BY: _____

Richard D. Auman, Mayor

JoAnn Turner, City Clerk

ACCEPTANCE OF OFFER

The foregoing Offer is hereby accepted and the Seller agrees to sell the premises upon the terms stated. By execution of this Agreement, the Seller acknowledges a receipt of a copy of this Agreement.

DATED this _____ day of _____, 2002.

SELLER:

**BURLINGTON NORTHERN and
SANTA FE RAILWAY**

BY: _____

STATEMENT OF JUST COMPENSATION
SUMMARY OF PROPERTY ACQUISITION AND OFFER TO PURCHASE

Project: BP 00-260

County: Jo Daviess

Parcel # 43-06-000-314-00
43-06-000-305-00
43-06-500-010-00
43-06-000-303-00

OWNER(S) OF REAL PROPERTY: The Burlington Northern and Santa Fe Railway Company "BNSF"

LOCATION OF PROPERTY: From City of Galena to Galena Junction and
Lots 4,5,6,7 and 3 Block 2 and Lots 1 thru 12, Block 1

In compliance with Sec. 301 of the federal Relocation Assistance & Real Property Acquisition Policies Act (P.L. 91-646, 49 CFR 24) and/or the Illinois Displaced Persons Relocation Act (310 ILCS 40 et seq.), the following summary has been prepared to fully inform you, the seller, of the details of the acquisition of (a portion of) your property for a recreational trail (bike, hiking
purposes. The legal description of the parcel to be acquired is attached hereto. walking, jogging and cross country skiing)

1. Existing Property:

Total Size/Area: 61.5 acres (acres/sq. ft.) more or less

Highest and Best Use as appraised: Recreational

Fair Market Value of Entire Property* \$ 70,725

*Fair Market Value of Entire Property is based upon a State-approved appraisal and is not less than the appraiser's opinion of fair market value which was determined after a personal inspection of your property, at which time you or your representative were given the opportunity to accompany the appraiser. The appraisal takes into consideration the location of your property, its highest and best use, current land sales of properties similar to your property and other indicators of values as may be necessary. (i.e., _____).

2. Land to be Acquired:

Estate or Interest to be acquired: Fee simple interest in a
railroad bed owned by "BNSF"

Total Land Areas to be acquired: 61.5 acres (acres/sq. ft.)

3. Major Improvements and All Fixtures to be acquired: There are no major improvements or
fixtures on the premises. The property does have several culverts in
need of repair.

4. Compensation for Property Acquired (61.5 acres acres/sq.ft.):

Fair Market Value, including all improvements, as part of the Whole Property: \$ 70,725

Damage to the remaining property as a result of the acquisition: \$ N/A

Total compensation for the property acquired: \$ 70,725

*(See attached Appraisal Report prepared by
Hertz Appraisal Services)

5. Other Consideration:

(N/A) \$ N/A

(N/A) \$ N/A

Total Other Consideration: \$ N/A

6. Total Just Compensation for Entire Acquisition: \$ 70,725
(includes all interests in the land required for the proposed public project, and damage to the remaining property, if any)

Any increase or decrease in the market valuation caused by the public improvement or project for which property is to be acquired, or by the likelihood that the property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded in making the determination of just compensation.

Statement of Just Compensation & Offer to Purchase

Page 2

Project: BP 00-260
Parcel #: 43-06-000-314-00; 43-06-000-308-00
43-06-500-010-00; 43-06-000-303-00

You may wish to retain and remove some, or all, of the improvements included in the acquisition. If so, the following owner-retention values have been established for the improvements listed above in Item 3, and the total of the owner-retention values for the improvements retained will be deducted from the total compensation.

<u>IMPROVEMENT</u>	<u>OWNER-RETENTION VALUE</u>
<u>N/A</u>	<u>\$ N/A</u>
<u>N/A</u>	<u>\$ N/A</u>
<u>N/A</u>	<u>\$ N/A</u>

NOTE: Any agreement to retain such improvements does not convey with it a permit to move the improvements on, or over any State highway. It is suggested that you contact the Illinois Dept. of Transportation district office nearest you for information regarding application for a permit if one is needed.

On behalf of the City of Galena I hereby offer the property owner the total sum of \$ 70,725 determined as the fair market value by an independent appraisal, for the property described on the attached instrument(s), free and clear of all claims of other parties, liens, taxes and encumbrances.

PRESENTED BY: Richard D. Auman, Mayor
(Chief Elected Official)

[Signature]
(Signature)

DATE: 2/17/02

STATEMENT OF OWNER

I have read the preceding summary describing how this appraised value was established and was offered the stated value of \$_____. I further state that:

There are no persons living on the property.

There are no businesses being conducted on the property by others.

The following persons are living or conducting business on the property (including owner if in occupancy). Give name and address:

Signed _____
Owner or Representative

Address

Please note that the signing of this statement by the owner (or representative) DOES NOT constitute an acceptance of the herein stated offer to purchase.



REC'D
LAW DEPT.

JUN 24 2002

FT. WORTH, TX

ILLINOIS COMMERCE COMMISSION

June 20, 2002

The City of Galena, JoDaviess County, Illinois,
Petitioner

Vs.

Chicago, Central & Pacific Railroad Company and The Burlington
Northern and Santa Fe Railway Company,
Respondents

T02-0064

Petition for approval of the acquisition of real estate in JoDaviess
County by exercising the power of eminent domain.

TO ALL PARTIES OF RECORD:

NOTICE OF HEARING

Notice is hereby given that the hearing on the above entitled matter is scheduled
for **July 30, 2002**, in Chicago, Illinois, at the offices of the Commission, State of
Illinois Building, 160 North LaSalle Street, 8th Floor - Reception Area, at the hour
of **9:30 a.m.**

Entered:

June B. Tate

June B. Tate
Administrative Law Judge
Review & Examination Program

JBT:rsc
Railroad Staff: Mr. VonDeBur

EXHIBIT B

PROOF OF SERVICE

Michael L. Sazdanoff, being first duly sworn on oath, deposes and says that on the 18 day of JULY, 2002, he caused to be served, a true and correct copy of **RESPONDENT, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S MOTION TO STRIKE AND DISMISS THE PETITION** upon:

Mr. Joseph VonDeBur
Railroad Section
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

Ms. June B. Tate
Administrative Law Judge
Illinois Commerce Commission
8th Floor
160 N. LaSalle Street
Chicago, Illinois 60601

Mr. Philip F. Jensen
Hammer, Simon & Jensen\
Attorneys at Law
303 N. Bench Street
P.O. Box 270
Galena, IL 61036

Mr. Michael J. Barron
Attorney at Law
455 N. Cityfront Plaza Drive, 20th Floor
Chicago, Illinois 60611-5318

by depositing same in the U.S. Mail depository located at Adams and Clinton Streets, Chicago, Illinois in an envelope(s) with first-class postage, prepaid.

